

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Hearing Submissions and Further Submissions on the Proposed Waikato District
Plan (Stage 1)

**MEMORANDUM BY COUNCIL TO HEARING COMMISSIONERS RELATING TO
IMPLEMENTATION OF THE NATIONAL PLANNING STANDARDS
11 February 2020**

May it please the Hearing Commissioners:

1. The National Planning Standards came into force in April 2019 and are intended to improve the efficiency and effectiveness of the planning system by providing nationally consistent:
 - a. structure
 - b. format
 - c. definitions
 - d. noise and vibration metrics
 - e. electronic functionality and accessibilityfor regional policy statements, regional plans, district plans and combined plans under the Resource Management Act 1991. The planning standards do not alter the effect or outcomes of policy statements or plans. The focus of this memorandum is the implementation of the structure of the National Planning Standards and the standardisation of zones.
2. Given that the Proposed District Plan was notified before the national planning standards came into effect, Waikato District Council is therefore required to make the required amendments to the Waikato District Plan by 05 April 2024.
3. A number of submitters have sought implementation of the National Planning Standards in their submissions, namely:
 - a. Property Council New Zealand [198]
 - b. Kainga Ora [749]
 - c. The Surveying Company [746]
 - d. Ta Ta Valley Limited [574]
 - e. Pokeno Village Holdings [386]
 - f. Zeala Limited [281]
 - g. Anna Noakes [524]
 - h. Heritage NZ [559]
 - i. Withers Family Trust [598]
 - j. Spark New Zealand Trading Limited [644]
 - k. Chorus New Zealand Limited [648]
 - l. Vodafone New Zealand Limited [646]
4. The matter of the National Planning Standards has also been raised in evidence, and was the focus of much of the s42A report for Definitions (Hearing 5).
5. Fortunately, many of the submitters seeking implementation of the National Planning Standards in their submissions are represented by planning consultants. Council has contacted and/or met with each of the consultants (or representative) and has collaboratively developed the following options and list of advantages and disadvantages.

6. We have given careful consideration to the implementation of the plan structure in the National Planning Standards through this District Plan review process. The panel has indicated some interest in exploring the potential to implement the National Planning Standards through the hearing process. The focus of this memo is implementing the structure of the National Planning Standards (Appendix 1). There appears to be four main approaches available to the Panel which are set out below.
7. **Option 1: Implement the standards after the plan review** – This would mean that the decision version of the Proposed District Plan looks and feels similar to that which was notified. Council would be required to notify a plan change before 3 May 2024 (that being 5 years of the date the National Planning Standards came into force) to implement the National Planning Standards in their entirety and would be a separate process. It is worth noting that there is no legislative obligation on the panel, or Council, to implement the National Planning Standards through the current Proposed District Plan process.
8. **Option 2: Implement the National Planning Standards structure for single-topic chapters** - There are a number of “topics” in the Proposed District Plan which have their own chapter with objectives and policies (although their attendant rules may be scattered through the zone chapters). Topics include:
- a. Historic Heritage (Chapter 7),
 - b. Natural Environment (Chapter 3) which could further be split into landscapes and biodiversity;
 - c. and Infrastructure (Chapters 6 and 14);
 - d. Reserves (Chapters 8 and 25); and
 - e. Specific zones in Chapters 9, 26-28 (Hampton Downs Motorsport and Recreation Zone, Te Kowhai Airpark Zone, Rangitahi Peninsula Zone)
- This option would involve collating the rules on these topics from the zone chapters, and relocating them, together with their objectives and policies, as a package in accordance with the structure of the National Planning Standards. The structure of the remaining Proposed District Plan chapters would remain largely unchanged, other than the relocation of the rules out of the zone chapters. The remainder of the National Planning Standards requirements would be implemented through a separate plan change process. The subsequent plan change would be substantial.
9. **Option 3: Implement structure for single-topic chapters and deconstruction of Chapters 4 and 5** - This is Option 2 combined with the deconstruction of Chapters 4 and 5. Chapters 4 and 5 contain the objectives and policies for the urban and rural environments respectively, and thus apply to more than one zone. For example, section 4.4 applies to Residential and Village Zones so these objectives and policies would either need to be duplicated into each of the Residential Zone and Village Zone or be tailored to each of those zones (doing so would be dependent on scope provided by submissions). Chapters 4 and 5 also contain all the amenity objectives and policies such as for noise and lighting. These would also be deconstructed into new chapters on each of these matters in accordance with the planning standards. There are likely to be some sections of the National Planning Standards where there is no content in the notified plan. As an example, there are no objectives specific for subdivision in the notified plan, so there would be an objective gap in the Subdivision chapter. This Option would see these gaps being filled through a subsequent plan change. The subsequent plan change/variation would not be as

substantial as for Option 2. It would be very specific and ring-fenced in its scope. Such a variation could be notified soon after the notification of the decision.

10. **Option 4: Full implementation as part of this plan review** – This option is essentially Option 3 with additional content added where there is not text available in the notified district plan. It is expected that there will be some gaps identified that may not be able to be filled easily and the Panel would have to consider if, by doing this full implementation, whether any person can be prejudiced in this action. This option carries some procedural risk if there is no submission specifically seeking inclusion of a particular provision, and the submissions seeking implementation of the National Planning Standards are relied upon for scope. As an example, a specific objective for the Subdivision chapter could be crafted, although there were none in the notified Proposed District Plan and there may not be any submissions specifically seeking such an objective. If additional text is required, the Panel must be alive to the matter of scope provided by submissions. Council's opening legal submissions by Ms Bridget Parham are particularly relevant to this matter.¹ Pursuing this option would mean no further plan change or process would be required to implement the National Planning Standards.

¹ Opening Legal Submissions by Counsel for Waikato District Council, 23 September 2019, paragraphs 105-119

Table 1: Advantages and disadvantages of options considered to implement the planning standards

	Option 1: Implement the standards after the plan review	Option 2: Implement the National Planning Standards structure for single-topic chapters	Option 3: Implement structure for single-topic chapters and deconstruction of Chapters 4 and 5	Option 4: Full implementation as part of this plan review
Advantages	<ul style="list-style-type: none"> • Structure is the same as what was notified • Less complicated in terms of a decision • Submissions can be followed more easily by submitters and council • Delayed expenditure to implement the National Planning Standards • Ease of use by plan users as it is a familiar structure • Limited change to the structure of the Plan 	<ul style="list-style-type: none"> • Objectives and policies for single-topic chapters are already in their own chapter • Ease of use by Plan users as it is a familiar structure • Limited change to the structure of the Plan • Easy to roadmap where provisions have ended up • Less effort required compared to Options 3 and 4 through this District Plan review process. • The subsequent plan change would involve less re-work than Option 1. • Low risk of judicial review because of the limited changes to the notified Plan. • Less risk of mistakes, errors, and unintended consequences as it is a less complex option than Options 3 and 4. • Some efficiency of implementing some of the National Planning Standards through this Schedule 1 process • Less overall cost than Option 1, as the National Planning Standards can be partially implemented 	<ul style="list-style-type: none"> • Some objectives and policies for single-topic chapters are already in their own chapter • The subsequent plan change would involve less re-work. • Low risk of judicial review because changes to Plan content would be only in response to specific submissions • Moderate efficiency of implementing some of the National Planning Standards through this process. • Less overall cost than Options 1 and 2, as the National Planning Standards can be partially implemented through this process. • Significantly smaller scale of subsequent plan changes to implement the National Planning Standards • Smaller future plan costs • Subsequent plan changes to implement the National Planning Standards can be tightly focused on gaps • Decreased scope for future re-litigation of issues. • Would implement a high proportion of the National Planning Standards 	<ul style="list-style-type: none"> • No subsequent process is needed to implement the National Planning Standards. • High efficiency of implementing all of the National Planning Standards through this process. • Reduced overall cost as the National Planning Standards are fully implemented through this process. • No subsequent plan changes required to implement the National Planning Standards. • No additional opportunity for future re-litigation of the same issues. • Simplicity of the National Planning Standards being implemented through a single Proposed District Plan process • Subsequent plan changes associated with the new National Policy Statements, Regional Policy Statement review and the next round of National Planning Standards, growth strategy, Hamilton to Auckland can be highly focused. • Less cost to the community in terms of an additional need to submit. • No additional administrative/communication costs associated with notification

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		<p>through this process</p> <ul style="list-style-type: none"> • Smaller scale subsequent plan change. to implement the National Planning Standards • If there are changes to the National Planning Standards, these can be picked up in the subsequent plan change. 	<ul style="list-style-type: none"> • Simplicity of having a large part of the National Planning Standards being implemented through a single process • Subsequent plan changes associated with new National Policy Statements, Regional Policy Statement review and, growth strategy, Hamilton to Auckland can be highly focused • All of the structural elements of the National Planning Standards will be achieved, and allows easy identification of gaps. • If there are changes to the National Planning Standards, these can be picked up in the subsequent plan change. 	<p>processes to notify National Planning Standards.</p>
Disadvantages	<ul style="list-style-type: none"> • Process needs to be done • The subsequent plan change may mean re-litigating the same issues • Likely to be more costly than the other options with a higher overall cost due to duplicated Schedule 1 processes (proposed plan and subsequent plan change) • Even with the mandatory direction provisions, the subsequent plan change 	<ul style="list-style-type: none"> • Difficulty for submitters finding where the provisions has been shifted to. • Does not fully satisfy the submissions requesting implementation of the National Planning Standards. • Confusion with multiple planning processes; appeals on the PDP are likely to still be progressing when the subsequent plan change is underway. • The subsequent plan change 	<ul style="list-style-type: none"> • Difficulties for Waikato plan users as it is an unfamiliar structure (although this is inevitable). • Significant change to the structure of the Plan • Risk of mistakes, errors, and unintended consequences due to complexity of undertaking the two processes at once. • Complex roadmap needed to indicate where provisions started and where they ended up. 	<ul style="list-style-type: none"> • Increased complexity • Moderate risk of judicial review largely around the creation of text that was not specifically requested by a submission. • Difficulties for plan users as it is an unfamiliar structure (although this is inevitable) • Significant change to the structure of the Plan • Higher risk of mistakes, errors, and unintended consequences due to complexity of undertaking the two processes at once.

	Option 1: Implement the standards after the plan review	Option 2: Implement the National Planning Standards structure for single-topic chapters	Option 3: Implement structure for single-topic chapters and deconstruction of Chapters 4 and 5	Option 4: Full implementation as part of this plan review
	<p>would essentially be a new district plan process</p> <ul style="list-style-type: none"> • This issue is going to continue to be raised at every hearing • Confusion with multiple planning processes; appeals on the PDP are likely to still be progressing when the subsequent plan change is underway. • The subsequent plan change may coincide with new National Policy Statements, Regional Policy Statement review and the next round of National Planning Standards, growth strategy, Hamilton to Auckland leading to very complicated planning processes • Pressure on the council staff to manage appeals at the same time as a multitude of planning processes. • Risk of submitters holding up an appeal, in order to wait for the subsequent plan change. 	<p>may coincide with the new National Policy Statements, Regional Policy Statement review and the next round of National Planning Standards, growth strategy, Hamilton to Auckland leading to very complicated planning processes.</p> <ul style="list-style-type: none"> • Pressure on the council staff to manage appeals at the same time as a multitude of planning processes. • Risk of submitters holding up an appeal, in order to wait for a new plan change for National Planning Standards. • There is a risk that the proposed plan and operative plan need to be compliant by 2024. • Will result in a hybrid plan combining two different structures. • Does not fully implement the National Planning Standards. 	<ul style="list-style-type: none"> • Difficulty for submitters finding where the provisions have ended up. • Does not fully implement the National Planning Standards. 	<ul style="list-style-type: none"> • Complex roadmap needed to indicate where provisions started and where they ended up • Difficulty for submitters finding where the provisions have ended up. • If there are future changes to the National Planning Standards, these may require a separate process, although it is anticipated the scope of changes should be limited.

11. Following the contact with the submitters' representatives, our recommendation is to undertake **Option 3 Implement structure for single-topic chapters and deconstruction of Chapters 4 and 5**. Feedback from the submitters' representatives is that once the project is commenced, the Panel may find that they can get very close to full implementation of the National Planning Standards.
12. Other comments made by the submitters' representatives were:
 - a. Implementation of the standards is compulsory, and this is an efficient process in which to undertake the change;
 - b. Decreased risk of re-litigating the process and decision;
 - c. The submissions provide a wide scope to adapt the content to the new format e.g. creating strategic content and objectives from Chapter 1 to 11. Noting there are already strategic objectives in the Proposed District Plan (although they may not be identified explicitly as such);
 - d. The exercise should be seen as primarily reformatting and organisation of the existing content that will then identify gaps;
 - e. Assisting to achieve the benefits of the planning standards sooner. This will result in increased usability and consistency of format, especially for users that access plans across New Zealand;
 - f. Additional costs now will be less than full implementation of the National Planning Standards at a later date;
 - g. Many of the chapters already lend themselves to easy re-formatting e.g. historic heritage;
 - h. While there will be new definitions or zone names, these will need to be adopted at some stage;
 - i. The existing proposed plan is in a digital format so it should be reasonably straightforward for a transition to full e-plan format.
13. Feedback from submitters' representatives identified the main risk with implementing the standards as part of the plan review process is that the Plan will come out looking considerably different and some parties may be concerned that they were not given the opportunity to comment. This risk can be somewhat mitigated through:
 - a. Directions issued by the Panel to implement the structure of the National Planning Standards which could be circulated to all submitters for comment;
 - b. Raising awareness of the National Planning Standards on Council's website and in the decision;
 - c. Discussing the migration of proposed zones to National Planning Standards' zones in each of the Section 42A reports; and
 - d. Careful roadmapping of the provisions to show where they started and where they ended up.
14. While there is a risk of mistakes, errors and unintended consequences, this is no greater than with the current process of addressing submissions.
15. There will be gaps in content where this is no scope provided by a submission but partial implementation of the National Planning Standards will highlight any gaps. These can subsequently be filled through a variation or plan change.

16. For ease of process for both submitters and Section 42A report authors, I recommend that the Section 42A reports retain the structure and format of the notified Proposed District Plan. The transition to the National Planning Standards (whether it's option 2, 3 or 4) can be undertaken as a parallel process, whereby the provisions as they are amended in the Section 42A reports are mapped to a new structure (notwithstanding that the Hearing Panel's decision may further amend the provisions). The decision version will thus be in the form of the National Planning Standards, accompanied by a document that indicates where each provision started and where it ended up.
17. Council therefore seeks directions from the Hearings Panel as to how the National Planning Standards be addressed through the Proposed District Plan process.

Dated at Ngaruawahia this 11th day of February 2020



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Principal Planner

Appendix I: National Planning Standards Structure for District Plans

PART 1 INTRODUCTION AND GENERAL PROVISIONS		
INTRODUCTION		
Chapters:	Foreword or mihi Contents Purpose Description of the District	
HOW THE PLAN WORKS		
Chapters:	Statutory context General approach Cross boundary matters Relationships between spatial layers	
INTERPRETATION		
Chapters:	Definitions Abbreviations Glossary	
NATIONAL DIRECTION INSTRUMENTS		
Chapters:	National policy statements and New Zealand Coastal Policy Statement National environmental standards Regulations Water conservation orders	
TANGATA WHENUA/MANA WHENUA		
Chapter:	[Tangata whenua/mana whenua]	
PART 2 DISTRICT WIDE MATTERS		
STRATEGIC DIRECTION		
Chapters:	[Insert name of strategic direction matter] Urban form and development	
ENERGY, INFRASTRUCTURE, AND TRANSPORT		
Chapters:	[Insert name of chapter]	
HAZARDS AND RISKS		
Chapters:	Contaminated land Natural hazards	
HISTORICAL AND CULTURAL VALUES		
Chapters:	Historical heritage Notable trees Sites and areas of significance to Māori	

NATURAL ENVIRONMENT VALUES		
Chapters:	Ecosystems and indigenous biodiversity Natural character Natural features and landscapes Public access	
SUBDIVISION		
Chapters:	[Insert name of chapter]	
GENERAL DISTRICT-WIDE MATTERS		
Chapters:	Activities on the surface of water Coastal environment Earthworks Light Noise Signs Temporary activities	
PART 3 AREA SPECIFIC MATTERS		
ZONES	Chapters:	Sections:
	Residential zones	Low density residential zone General residential zone Medium density residential zone High density residential zone
	Rural zones	General rural zone Rural production zone Rural lifestyle zone Settlement zone
	Commercial and mixed use zones	Neighbourhood centre zone Local centre zone Commercial zone Large format retail zone Mixed use zone Town centre zone Metropolitan centre zone City centre zone
	Industrial zones	Light industrial zone General industrial zone Heavy industrial zone
	Open space and recreation zones	Natural open space zone Open space zone

		Sport and active recreation zone
	Special purpose zones	Airport zone Corrections zone Future urban zone Hospital zone Māori purpose zone Port zone Stadium zone Tertiary education zone [Additional Special Purpose] zone
PRECINCTS (MULTI-ZONE)		
Chapters:	[Insert name of multi-zone precinct] precinct	
DEVELOPMENT AREAS		
Chapters:	[Insert name of development area] development area	
DESIGNATIONS		
Chapter:	[Insert name of requiring authority]	
PART 4 [APPENDICES AND MAPS]		
Chapters:	Appendices Maps	